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ESTABLISHMENT OF THE WORK PROGRAMME OF THE STANDING COMMITTEE

Issues for consideration in the establishment of the work programme

Background note by the UNCTAD secretariat

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I. Introduction

1. At the second part of its thirty-eighth session held from 21 April to 7 May 1992, the Trade and Development Board established terms of reference for the Standing Committee on Developing Services Sectors, which specified that the Committee would hold separate sessions on services in general, shipping and insurance. This note addresses primarily the issues raised in paragraphs 1 and 2 of the terms of reference, as well as other items of a generally applicable nature, with a view to assisting the Standing Committee in establishing the work programme of the Committee in the area of services in general. Furthermore, it should be recalled that the analytical report to UNCTAD VIII (TD/358) includes a chapter on services which contains the findings of the UNCTAD secretariat on national and international policies and the emerging trends in the services sector and could therefore facilitate discussion on the work programme for services in general.

2. It should be borne in mind that in the past UNCTAD has gained considerable experience in the transport and insurance sectors which may contribute to the discussions on the work programme on services in general. For the separate sessions on shipping and insurance, additional background documentation has been prepared or is in the process of preparation. Such documentation takes into account the special features which are both general and specific in these sectors.

II. National policies

3. The overall objective of the Committee's work on national policies is ***to analyse and assist, as appropriate, in the formulation of national policies aimed at strengthening the production, export and technological capacity of services sectors, taking into account their level of development in different countries, with a view to contributing to development and, thus, increasing the participation of developing countries in world trade in services***. In carrying out this work the Committee is to focus on a ***review of the development of services sectors in developing countries and a comparative analysis of policies, including identification of domestic weaknesses and capabilities, aimed at creating the conditions necessary for the development of competitive services sectors and exports of services*** (Terms of Reference (TD/B/1323 (vol. II)), paragraph 1 (a)). Studies conducted by the secretariat under its mandate to study "the role of services in the development process", and the related technical assistance activities, have provided considerable insight into the domestic weaknesses and capabilities of developing countries in the services sector.

4. One obvious weakness shared by many developing countries is inadequate service infrastructures. In accordance with paragraph 1(b) of its Terms of Reference, the Committee is to consider ***policies aimed at developing and strengthening the institutional, technological and physical infrastructure relating to services***. In developing countries, large segments of the population do not have access to those essential services needed for the support of even basic needs, let alone efficient economic activity. Such sectors include education, health, transportation and communications, in which "modernization" often only benefits small percentages of the population usually located in urban centres. The growing interdependence of the world economy and increasing globalization of production processes require the provision of adequate transport processes which has led to an integration of shipping, ports and land-transport services and the emergence of the transport chain concept as embodied in multimodal transport operations. Furthermore, the existence of a modern telecommunications network has become the prerequisite for the development of competitive services sectors. These general infrastructural problems hinder the ability of developing country services producers to compete effectively with developed country enterprises in world markets and even in their own countries.

5. Developing countries are placed at a further disadvantage by financial weaknesses, including inadequate access to credit facilities, as well as lack of access to state-of-the-art technology and skilled personnel. Often the regulatory and institutional framework presents a further handicap. Government policies not conceived with a view to supporting the competitiveness of the services sector can inadvertently impede the development of competitive service enterprises. Examples of this would include trade policies that impede access to necessary equipment or material inputs, fiscal policies that inadvertently discriminate against services production and exports, investment policies that neglect human capital development, transfer of technology and infrastructural considerations, as well as agreements with foreign suppliers that may effectively bestow upon them privileges not shared by domestic service suppliers (i.e. more than "national treatment").

6. There is a clear trend away from the traditional attitude in many countries that the Government's responsibility to ensure access by the population to basic services at acceptable standards of quality implies government ownership of the production and distribution of such services. It is widely recognized that a combination of privatization and appropriate regulation can achieve greater efficiency while, at the same time, ensuring access to the services concerned for a wide spectrum of the population. Government regulations may contain aspects that fail to encourage the growth of specialized service suppliers and impede the process of externalization.

7. The process of development of competitive services sectors and externalization may be also frustrated for other reasons, such as obsolete attitudes within the private sector, in particular lack of awareness of the possibilities for investment and restructuring and of the optimum use of information. In this context, ***policies aimed at human resources development, the development of knowledge-intensive services, producer services related to primary and manufacturing sectors and telecommunications*** need to be addressed (Terms of Reference, paragraph 1(c)).

8. Inadequate services support for the manufacturing and other sectors undermines the ability of enterprises to maintain the degree of efficiency and quality necessary to meet international competition. Lack of access to specialized "knowledge-intensive" producer services detracts from the competitiveness of firms in the manufacturing, agro-industrial and services sectors. Lack of a domestic capacity in such producer services deprives the country of a main generator of human capital, of a catalyst for both services and manufacturing industries in the process of adaptation to technological advance and of the capacity to retain flexibility and dynamism in the productive process in response to challenges and opportunities in the world market. Inadequate services support is a disincentive to investment, both domestic and foreign. The net result of failure to develop the producer services sector is to detract from the overall ability of the economy to adjust to a more liberal environment for trade and investment.

9. Successful government policies for stimulating competitiveness in the services sector can be based on various techniques involving training, transfer of technology, support for export-oriented services, appropriate trade, government procurement and fiscal policies, infrastructural development, government-supported export credits, etc.. Some Governments have been able to recognize the contribution of the non-quantifiable aspects of certain services, such as media and other cultural services, to national identity and to the development process. Others are attempting to identify and stimulate those services crucial for effective protection of the environment. There are many other cases, however, where potentials for developing competitive services sectors have not been realized, even where the reasons for this have been identified. *A synthesis of the material prepared by the secretariat and currently available to it could contribute to the conduct of the review foreseen in paragraph 1(a) of the Terms of Reference. This material includes inter alia studies of the need for and use of producer services. However, as this material derives largely from technical assistance activities and thus is concentrated on countries that have solicited such assistance, there may be a need for additional work to ensure a wider sample of country experiences. In addition, countries may wish to make submissions to the Committee as to their experiences and policies in developing services sectors at the national level.*

10. The Committee on Developing Services Sectors is to focus on ***improving the capacity of individual countries, in particular developing countries, to benefit from information related to services production, trade and technology*** (Terms of Reference, paragraph 1(d)). Massive amounts of information relevant to production and trade in services is held by Governments, international organizations and private sector bodies, but rarely in a form directly usable by policy-makers and traders. A first step in addressing this problem would be to identify modalities by which access to this information could be facilitated and ways of formatting it so as to be of direct use to private

and public users. *In order to initiate work under this item, it would be necessary to identify the main sources of data and information relevant to the consideration of policy options by Governments and enterprises in various services sectors and, to the extent possible, to study specific experiences with respect to modalities to stimulate the effective processing of such information in a form required by Governments and traders.*

11. The factors affecting the development of competitive services sectors in developing countries, and the difficulties faced in enhancing their exports of services, differ in intensity from sector to sector. While some appear to apply widely (e.g. financial weakness, lack of state-of-the-art technology), others are relatively specific to the sectors in question (e.g. visas, professional qualifications, access to networks, quantitative limitations, etc). As recognized in the Committee's terms of reference, it is necessary ***to identify sector-specific policy options, with a view to developing competitive services sectors*** (Terms of Reference, paragraph 1(e)).

12. With a view to making the Committee's tasks more manageable in this area, there might be merit in the Committee introducing some sectoral specificity into its work. While it is clear that the Terms of Reference deliberately avoid indicating priority sectors or any suggestion of excluding individual sectors from the scope of the Committee's work, it might be useful to identify certain sectors on which work could be initiated on an illustrative or indicative basis, in addition to the shipping and insurance sectors. For example, work with respect to increasing the knowledge of laws and regulations concerning the services sector, or with respect to the collection and dissemination of statistics on trade in services, could begin by concentrating on a limited group of selected sectors.

13. In this context it should be noted that the following sectors were addressed in the Analytical Report to UNCTAD VIII, some of which are crucial to the development process and of actual or potential export interest to developing countries: (a) construction and engineering services; (b) professional and business services; (c) media services; (d) labour services; (e) air transport; (f) banking; (g) insurance; (h) tourism services; (i) telecommunications. *The Committee might consider it useful to request the secretariat to prepare sectoral studies and/or to convene expert groups with a view to identifying sector-specific policy options that could lead to the achievement of the Committee's objectives with respect to certain key sectors.*

14. The Committee is to ***analyze issues relating to access to information networks and distribution channels for services*** (Terms of Reference, paragraph 1(f)). World markets have increasingly come to be characterized by vertical integration and networking, i.e. the setting-up of systematic linkages among activities within the enterprise, between associated firms and with suppliers and customers. Through networking, various service providers coordinate their activities in order to attain economies of scale and scope, to create value added, and to compete against the networks of competitors. Although networking facilitates greater efficiency in the provision of services and often allows small and remote providers to benefit from electronic distribution networks, it reduces the incidence of arms-length relations and can also result in greater barriers to entry. The general problem of access to information networks involves a wider range of issues, including access to technology and maximization of value added. The competitive position of developing-country firms would be strengthened by the development of public networks, for example public R & D networks along the lines of ESPRIT in Europe, at the world level. It has also been stated that for many services the information network has become the distribution channel. Distribution, rather than material production, has become the "commanding element" in the value-added chains. Greater understanding of such phenomena could assist countries in formulating appropriate policies and regulations to confront the challenges of the "networked world economy". *The analysis by the Committee of issues relating to access to information networks and distribution channels for services could be facilitated through consideration of these issues by a group of experts, and as recognized in the Cartagena Commitment the participation of experts from the private sector is of particular importance.*

III. International policies

15. Concerning international policies to strengthen the export of services, the Committee is to focus on ***examining difficulties particularly faced by developing countries in enhancing exports of services, thereby increasing their participation in world trade in services*** (Terms of Reference, paragraph 2 (a)). In general, for a large number of developing countries, services are a deficit item in the balance of payments. However, many developing countries have a comparative advantage in labour-intensive services that could be supplied both through temporary movement of persons and cross border through telecommunication facilities. In considering the difficulties faced by developing countries in the export of labour-intensive services, appropriate national and corporate strategies as well as an international strategy need to be addressed.

16. In trade in goods, many developing countries have been successful in combining lower labour costs with access to technology and enhancing skill levels, as well as certain natural advantages, so as to increase their participation in international trade for certain key exports, including textiles and clothing, electronic goods and other light manufactures, steel, processed agricultural and tropical products, etc. This process has been greatly facilitated by the existence of a multilateral framework, based on the principles of most-favoured-nation treatment, national treatment on internal taxation and regulation, bound tariff rates and the elimination of quantitative restrictions, complemented by the GSP, which has provided developing countries with needed additional advantages in entering the world markets for manufactured goods. One of the preoccupations of negotiators in the Uruguay Round has been to design a multilateral framework to govern trade in services which will provide developing countries with similar opportunities to increase their participation in international trade in services. These negotiations have attempted to take into account the special characteristics that differentiate services trade from trade in goods, notably that at least one and in some cases all four "modes of supply", i.e. movement of consumers, capital and physical persons, as well as cross-border movement, are necessary for trade in services to take place and have provided a framework within which market access commitments with respect to each of these "modes" can be negotiated.

17. Trade in many services requires the temporary movement of physical persons, as service suppliers, across national frontiers. However, such movement would be more crucial to developing countries as they would seem to possess comparative advantages in labour-intensive services and lack access to alternative "modes". Developing countries would thus have the most to lose from restrictions on such movement, especially if the conditions for such movement are relatively more stringent for their citizens than for those of other countries. As is made clear in the relevant annex to the draft General Agreement on Trade in Services (MTN.TNC/W/FA), the objective is to provide for the possibility of negotiated specific commitments applying to the movement of all categories of natural persons providing services under the Agreement, not to interfere with immigration policies dealing with residence, citizenship or employment on a permanent basis. However, measures applied to regulate the entry, temporary stay and orderly movement of natural persons should not be applied in such a manner as to nullify or impair the benefits accruing under the terms of a specific commitment. Efforts to liberalize with respect to this mode will be negotiated within this framework.

18. However, the ability of developing countries to export labour-intensive services also requires the appropriate domestic organization at the corporate level so that human capital development and transfer of technology aspects can be maximized and the so-called "brain drain" effect reversed. It also requires a clear understanding of those skills for which world demand can be expected to increase, in order that appropriate national and corporate strategies can be designed. In this context, the Committee should consider ways and means of ***promoting efficient marketing of export-competitive industries and domestic labour skills***(Terms of Reference, paragraph 2(d)).

19. Even when persons are physically permitted to enter foreign markets, services suppliers may be impeded from exporting services by regulations, including licencing, aimed at ensuring adequate levels of education, skills and other qualifications. The draft General Agreement on Trade in Services recognizes that such regulations should be based on objective criteria and not constitute disguised restrictions to trade in services. However, as even the most ambitious efforts at economic integration have experienced, the recognition of standards is a difficult exercise and is hampered by the multiplicity of standard-setting and enforcement bodies and general lack of information.

More systematized information on criteria for the recognition of qualifications, as well as on international bodies active in the process of mutual recognition and harmonization, would seem necessary.

20. Labour-intensive services, particularly those in the "information service" category, can also be exported "cross-border" through telecommunication facilities, or "offline", thus not involving a significant movement of personnel. Some developing countries have demonstrated strong export competitiveness for the export of software, data entry, data processing and other computer-related services, although more needs to be understood about the factors that determine trade and investment flows in this sector and the contribution of foreign direct investment to the development of its competitiveness.

21. Another difficulty faced by developing countries in particular in enhancing their services exports relates to the dominant position of developed country enterprises in world trade in many service sectors. To compete effectively with such enterprises, developing country services suppliers would have to benefit from the policies aimed at overcoming their weaknesses at the national level and their difficulties in penetrating foreign markets referred to above. To a certain extent, developing country suppliers may be disadvantaged by restrictive business practices of competitors, such as those types of practices that have prompted certain new competition legislation in recent years (e.g. collusive tendering, anti-competitive mergers, etc.). In addition, the types of unfair trade practices that prevail in trade in goods may similarly distort services trade, notably subsidies and dumping practices, although these may be relatively more difficult to detect in the services sector. Indeed, their presence is beginning to attract attention and provoke proposals for remedial action.

22. *Countries may wish to make submissions to the Committee on their experiences and policies. Moreover, with a view to enhancing its ability to assist in the formulation of national policies contributing to the increased participation of developing countries in world trade in services, the Committee might wish to address, at the expert level, the development of competitive service industries based on domestic labour skills and the difficulties faced in the export of such services, including their efficient marketing. Member States may also wish to provide the Committee with examples of unfair trade practices which they consider affect their ability to enhance their exports of services or which inhibit them from accepting a greater degree of liberalization in specific sectors.*

23. The Standing Committee on Developing Services Sectors is to focus on the ***impact of progressive liberalization in the development of competitive services sectors*** (Terms of Reference, paragraph 2 (b)). In this context, it should be recalled that in the Uruguay Round negotiations on trade in services, one of the main preoccupations of developing countries has been whether developing country suppliers would be able to benefit effectively, in terms of increased exports of services, from market access commitments. At the same time, developing countries were unsure of the ability of their firms to compete with developed country enterprises which could take immediate advantage of liberalization in their own domestic markets. There has also been concern that a general liberalization of trade in services would result in a concentration of key knowledge-intensive services around the main financial and commercial centres in developed countries, leaving developing countries on the periphery. Another area of concern for developing countries in this respect is the identification of ways and means to ensure that foreign service providers that benefit from liberalized market access accept conditions designed to strengthen the domestic services capacity of developing countries.

24. *The Committee should be informed of actual experiences with liberalization in trade in services, including those in the context of regional integration agreements, particularly where liberalization has covered the four different modes of delivery. The Committee may also wish to consider developing country experience with such liberalization in the context of structural adjustment programmes. On the basis of the above, the Committee could assess the impact of liberalization and draw appropriate policy recommendations from such experiences.*

25. The Committee is also to focus on ***"policies aimed at enhancing cooperation with other countries, at regional, subregional and interregional levels, including mutual trade liberalization, pooling capabilities to improve skills, distribution networks and infrastructure development"*** (Terms of Reference, paragraph 2 (c)). Many free trade areas, customs unions and other economic cooperation arrangements have not taken full account of the need to extend such cooperation to the services sector. The Commitee could make a major contribution to appropriate policy formulation in this area by conducting a review of the experience of cooperation arrangements at the interregional,

regional and subregional levels, so as to enable all members to benefit from the experience of other groups. *To facilitate the Committee's consideration of this item, the secretariat could prepare a study of experiences of countries with cooperation agreements at the subregional, regional and interregional levels, aimed at faciliating mutual trade in services. Members could also make submissions of relevant documents and studies relating to their experience in this respect.*

26. The Committee, pursuant to paragraph 2(e) of its Terms of Reference, should ***increase knowledge of laws and regulations concerning the services sector with a view, inter alia, to adapting them to the requirements of increasing globalization of services, promoting transparency and mutual knowledge of the pertinent regulations.*** Owing to the special characteristics of services, they are more highly regulated than the production of goods. The pervasiveness of regulations on services differs in its extent and nature in different countries. At the multilateral level, some services are subject to a carefully articulated structure of agreements and others to none at all. The regulation of services is much more prevalent at the national level. Such regulation may apply to the quality of the service, the activity of providing it, and/or the service provider, whether a natural or juridical person. Regulations introduced to enforce standards have special significance in different sectors; for example in financial services they are for prudential reasons, in professional services they ensure professional qualifications, in the audio-visual context they ensure cultural content and national identity, and in telecommunications they relate to technical levels and compatibility. Many developing countries have an inadequate regulatory structure for developing and strengthening certain services sectors.

27. Laws and regulations of a horizontal nature, for example on investment, immigration and fiscal matters, can affect all services sectors, although their impact may be relatively greater on some of them. Others are clearly sector-specific , while some, such as regulations on professional qualifications, may have been formulated and implemented by professional bodies whose authority in this respect is recognized by governments at different levels. Such laws and regulations can be applied at the international, national, and provincial, state or local levels. Many laws and regulations are drawn up without considering their impact on the development of domestic services capacity or trade and may have an adverse effect. Another issue is how countries have adapted their laws and regulations to globalization, technological advances, changing institutional structures, new services and integration of markets.

28. *The examination by the Committee of the types of legislation and regulations governing production and trade in services and experiences with respect to both "deregulation" and the adaptation of laws and regulations to globalization could be facilitated by an inventory of laws and regulations prepared by the secretariat on the basis of its own research and submissions by members of the Committee. Information on laws and regulations relating to the services sector would improve the capability of policy-makers and investors to take appropriate decisions to enhance the efficiency and competitiveness of services.*

29. Collecting and disseminating statistics on trade in services in areas where such collection or dissemination is not done by other international organizations and defining ways to improve such collection and dissemination is another task of the Committee under paragraph 2 (f) of its Terms of Reference. Important efforts are being made by Governments and international organizations to improve services statistics at national and international levels (e.g. the "Voorburg group"), but comparable services statistics are not disaggregated and do not identify trade flows. The adequacy of statistics also differs in different sectors. There is a need for information on the adequacy of statistics, the collection of comparable statistics and their disaggregation. In this respect, close coordination between international organizations involved in collection and dissemination of such statistics is required. There is also a need for strengthening the data base on services. The recommendations of the Committee could contribute to: (i) developing countries' efforts to improve the statistical methodology used by them in their studies of the role of services in their development process so as to permit a reformulation of development strategies; and (ii) the development of internationally comparable data of sufficient detail and accuracy to permit developing countries to participate in international negotiations on trade in services and formulate service export strategies. *Information on the evolution of work on statistics and an improved understanding of services production, international services transactions, and specific services activities such as producer services and information services could be provided by member States with the aim of assisting the Committee to identify the most important work in this field and identify the key problems, particularly in developing countries and countries in transition. The absence of adequate statistics affects the capability of policy-makers and investors to take appropriate decisions.*

30. In addressing the above-mentioned issues, in particular those relating to paragraphs 1(a), 1(b), 1(e), and 2 (e) of the Terms of Reference, the Committee should take into account paragraph 5 of the Terms of Reference which provides that ***the Committee, in implementing its functions, should pay due attention to the role of services in market-oriented development, including issues related to privatization and deregulation.***

31. Moreover, pursuant to paragraph 6 of the Terms of Reference, ***in implementing the above, the Committee shall take into account the work undertaken by the Intergovernmental Group of Experts on Restrictive Business Practices.*** The consideration of the issue of restrictive business practices is of particular importance in the context of addressing paragraphs 1(f), 2(a) and 2(b) of the Terms of Reference.

32. In the case of countries undergoing transition to a market economy, the problems are different and more acute, as previous economic policy resulted in considerable neglect of the services sector, particularly those services that fall in the category of producer services. Priorities would seem to include the establishment of appropriate legal structures to stimulate the development of these services, as well as to identify areas where trade and investment arrangements with other nations could assist these countries to strengthen their services sectors and facilitate the structural adjustment process, while enhancing their exports of services. *In order to assist the Committee in its consideration of the role of services in market-oriented development, the countries in transition could make submissions on their experiences with respect to the development of their services sectors and their exports of services. The secretariat, in the preparation of its studies, would take into account such experiences.*